IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2210 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Appellant(s)
Versus
VINOD VANAJI CHAUDHARI - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 08/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

This appeal is preferred by the State under Section 378(1)(3) of the Code of Criminal Procedure against the judgment and order delivered by Additional Sessions Judge, 5th Fast Track Court, Ahmedabad on 15.9.2006 in Sessions Case No.222 of 2005, whereby the present opponent came to be acquitted for the charges levelled against him under Sections 363, 366, 376 of the Indian Penal Code.

The complaint reveals the prosecution case that the complainant Sunitaben Chandubhai Rathod has two daughters; one named Sonia aged 19 years who is residing in Santoshinagar and the other named Mona aged about 17 years who was studying in 10th standard in Uma Sikshan Tirth School. On 29.9.2004, the complainant went to Bhavnagar to see her sister Darshana. On 14.10.2004 at about 9.00 p.m., in the night, her elder daughter called her and informed her that her younger daughter Mona has gone somewhere in the afternoon and did not return. Therefore, she returned on 15.10.2004 at about 12.30 in the afternoon and tried to find her out. As she was not found, she filed a police complaint after two-three days. During the investigation, it was found that one Vinod Marathi used to come to the house of the victim-Mona who is residing at Saijpur chali. On inquiry about Vinod, it was found that he is also missing. Therefore, a suspicion arose that this Vinod has taken Mona with him. On 20.10.2004, Mona came to her house in the night and on asking her, she stated

that one Vinodbhai Vanabhai Chaudhary loves her and she also loves him. He took me to Maharashtra by saying that he shall marry me and there they stayed in his friend's house where they had sexual intercourse for two-three times in the night. She also stated that she loves him since last five months and prior to this incident also, he used to take her to a guest house near Mota Chiloda where also they had sexual intercourse. On knowing about this, she filed a police complaint to this effect on the next day. The complaint was registered in Sardarnagar Police Station, investigation was carried on and on the evidence being collected, the accused was arrested and the charge sheet was filed in the court of learned Metropolitan Magistrate Court. As the offence under Section 376 of the Indian Penal Code was exclusively triable by the Court of Sessions, the said case came to be committed to the Court of Sessions. The charge in the above said offence came to be framed against the accused vide Exh.1 and the accused pleaded not guilty and claimed to be tried. Further statement of the accused was recorded under Section 313 of the Criminal Procedure Code.

Therefore, prosecution tendered the evidence to prove its case and examined as many as 15 witnesses, while voluminous documentary evidence was also produced by the prosecution on record.

Prosecution examined P.W. 1 Sunitaben Chandubhai Rathod at Exh.5 – Complainant and mother

of the victim Mona. She has stated that she do not remember the date and month of birth of Mona, whereas she has stated in the complaint that the date of birth of Mona is 8.7.87. Further, as per her deposition, when she came to know from her elder daughter that the accused has taken her daughter Mona on 14.10.04 and she came on the next day from Bhavnagar to Ahmedabad and tried to find out Mona for two days and, thereafter, she filed the complaint. But, looking to the complaint, it seems that after the incident happened on 14.10.2004, she gave the complaint on 21.10.2004 i.e., after seven days from the incident. Discussing this evidence, the learned trial Judge came to the conclusion that her evidence cannot be totally relied upon.

P.W.2 at Exh.7 Monaben Chandulal Rathod victim herself is examined who has narrated in detail about her having love affair with the accused, about her going with him several time in absence of her mother, about her having physical relations with him etc., She has stated that the accused did not tell her before taking her to Maharashtra and that their intention was to get married and because of her minor age, the could not do so. Therefore, from her deposition, it cannot be said that the accused has forcibly taken her away from the custody of her mother and also no clear proof is available from her deposition regarding her age.

P.W.6 Sonia Dilipbhai at Exh.15 is examined

who is the elder sister of the victim Mona who stated that she went to her mother's place in the afternoon. Her mother went to Bhavnagar and she did not find her sister Mona anywhere. Therefore, she waited till evening and informed her mother in the night that her sister Mona is missing. She did not try to find out what happened thereafter. Thus, her deposition is not helpful to prove that the said accused took her away and established physical relations with victim Mona.

P.W.7 Dr.Bhairavi Balwant Pandey at Exh.17 is examined who stated that she was serving as Medical Officer in the Civil Hospital and on 21.10.2004, one Woman constable B.No.6864 came with a yadi of Sardarnagar Police Station and she admitted her in the gynacealogy department and was discharged on 23.10.2004. She stated that on inquiry from Mona, she stated that she has relations with said Vinod – accused since last eight months, she ran away with him to Maharashtra, they stayed there for five days, established physical relations for two-three times, prior to this also they had sexual intercourse for five-six times etc. She produced the report vide Exh.18 according to which there were no external injuries on her body, there were no blood or semen marks on her clothes.

P.W.8 is Dr.Bhargav Becharbhai Trivedi at Exh.20 who examined the accused and gave the certificate at Exh.21.

P.W.14 Bhavnaben Ramanlal Patel at Exh.39 is examined, who is the teacher of Uma Tirth School where the victim Mona was studying. She stated that in admission form, the date of birth of Mona is mentioned as 8.7.87 which was written on the basis of the affidavit sworn in by her parents on 25.6.93. The said date of birth is mentioned only on the basis of the said affidavit. As per the say of mother of Mona, she was born in Kubernagar Government Hospital but no such certificate was produced at the time of taking admission in the school which could have given the correct birth date of Mona.

P.W.12 Kusumben Laxmichandra at Exh.29 is examined who is the Principal of Chharanagar School No.1 where Mona was studying from 4th standard. There also her date of birth is mentioned as 8.7.87, but as per the say of this witness, the said date was mentioned on the basis of the certificate issued by the school where she has studied 2nd and 3rd standard. Therefore, there is no separate evidence to show her correct date of birth.

P.W.13 Bhartiben Jivatram Vyas at Exh.34 who is teacher in School No.2 has stated that Mona got admitted in standard 2nd wherein her date of birth was mentioned as 8.7.87 but the same was mentioned on the basis of the certificate issued by the school where she studied standard 1st.

While discussing the evidence of these

witnesses, the learned trial Judge came to the conclusion that these witnesses were examined to get the correct date of birth of victim Mona but in none of these witnesses' deposition, the correct date of birth is reflected.

P.W.15 Khengaji Chaturji Rajput at Exh.42 is the Investigating Officer who recorded the complaint, recorded the statements of the victim and witnesses, seized the clothes worn by the victim, sent the victim for treatment at Civil Hospital, collected the evidence, arrested the accused, seized the clothes worn by the accused and as the accused ate glass pieces in tension, sent him for treatment to the Civil Hospital and after obtaining the papers from the Civil Hospital, filed the charge sheet against the accused. Thus, the Investigating Officer has not taken any efforts to find out the correct date of birth of the victim Mona. Her date of birth was believed to be 8.7.87 only on the basis of the affidavit made by her parents. Mona's mother Sunitaben has stated that Mona was born in Kumbernagar Government Hospital. The Investigating Officer ought to have gone there and obtain the certificate of the date of birth of Mona which he has not done.

The panch witnesses have not supported the case of the prosecution and, therefore, the panchanamas are not proved.

After hearing the prosecution as well as the defence, learned trial Judge came to the above said conclusion and hence this appeal.

Learned trial Judge, after appreciating the evidence and contentions raised, came to the conclusion that the age of the victim Mona is not proved to be less than 18 years in this case and, therefore, the case of kidnapping and raping is not proved. There were chances of absconding from the company of the accused when she was taken in train which she did not do. Further, the accused took the victim Mona on bike to Saijpur tower and stayed there for the whole day and went in night's train to Surat. There was also possibility for the victim to abscond during the period when the accused went to purchase the ticket alone but she did not do so which clearly shows that her consent was there all throughout. From the evidence of the victim Mona, she had relations with the accused since last eight months and they used to meet behind the back of her mother. Therefore, the prosecution has failed to prove the charges levelled against the accused.

We have carefully gone through the contentions raised as well as we have scanned the record and proceedings of the Sessions Case called for from the trial Court. We have scanned the evidence of each witnesses and appreciated each circumstances of the case.

Needless to say that in appeal against acquittal also, the High Court possess the same powers as in appeal against the order of conviction. The High Court may reappreciate the evidence and give its own finding. But in appeal against acquittal if the High Court comes to different finding than the finding derived with by the trial Court then the High Court must deal with the grounds of acquittal advanced by the trial Court. Unless the reasons given by the trial Court are manifestly perverse as unable to stand to reason in any circumstances, interference would be justified in acquittal appeals. However, from the same appreciation of evidence if two views are possible, the view taken by the trial Court cannot be replaced by the second view.

We do not find, therefore, reasoning of the trial Judge extensively perverse as to interfere with at this stage.

In view of the above, this appeal stands dismissed.

(J.R.VORA, J)

(SHARAD D DAVE, J)

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